EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0887-SLG-E **TCEQ ID:** RN105499206 **CASE NO.:** 35945

RESPONDENT NAME: Race 4 Time, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Race 4 Time, 22 East Commercial, Higgins, Lipscomb County

TYPE OF OPERATION: Sludge transporting operation

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received February 7, 2008, alleging that the Respondent was operating a sludge transporter business without proper authorization. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 3, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Chad Appel, Owner, Race 4 Time, Inc., P.O. Box 172, Higgins, Texas 79046
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: X Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** February 7, 2008 **Date of Investigation Relating to this Case:** February 12, 2008 **Date of NOV/NOE Relating to this Case:** April 30, 2008 (NOE) **Background Facts:** This was a complaint investigation. **WATER** 1) Failure to apply for and receive a sludge transporter registration from the Commission prior to commencing operations. Specifically, the Respondent transported 16 chemical toilets with septic waste from various oil field locations in Texas to property off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas [30 TEX. ADMIN. CODE § 312.142(a)]. 2) Failure to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the (Texas) facility has written authorization by permit or registration issued by the Executive Director to receive wastes. Specifically, waste from 16 chemical toilets was dumped on the ground at property located off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas [30 TEX. ADMIN. CODE § 312.143 and TEX. WATER CODE § 26.121(a)].	**Total Assessed:** $6,000 **Total Deferred:** $1,200 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,800 **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that on June 12, 2008, the Respondent received their sludge transporter registration. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, remove and properly dispose of all the chemical toilet waste and contaminated surface soils from all affected areas; and b. Within 45 days after the effective date of the Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision April 29, 2008*

DATES					
Assigned	5-May-2008				
PCW	22-May-2008	Screening	22-May-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Race 4 Time, Inc.		
Reg. Ent. Ref. No.	RN105499206		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35945	No. of Violations	2
Docket No.	2008-0887-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Heather Brister
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$6,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History — 0.0% Enhancement — *Subtotals 2, 3, & 7* **$0**

Notes: No change due to no previous compliance history.

Culpability — No — 0.0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0.0% Reduction — *Subtotal 5* **$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0.0% Enhancement* — *Subtotal 6* **$0**

Total EB Amounts	$79
Approx. Cost of Compliance	$2,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$6,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0.0% — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$6,000**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$6,000**

DEFERRAL — 20.0% Reduction — *Adjustment* **-$1,200**

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$4,800**

Screening Date 22-May-2008 **Docket No.** 2008-0887-SLG-E **PCW**

Respondent Race 4 Time, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 35945 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN105499206

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 22-May-2008 **Docket No.** 2008-0887-SLG-E **PCW**

Respondent Race 4 Time, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 35945 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN105499206

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 312.142(a)

Violation Description Failed to apply for and receive a sludge transporter registration from the Commission prior to commencing operations. Specifically, the Respondent transported 16 chemical toilets with septic waste from various oil field locations in Texas to property off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 4 | 100 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $4,000

Four monthly events are recommended from the February 12, 2008 investigation to the screening date (May 22, 2008).

Economic Benefit (EB) for this violation — Statutory Limit Test

Estimated EB Amount $8 **Violation Final Penalty Total** $4,000

This violation Final Assessed Penalty (adjusted for limits) $4,000

Economic Benefit Worksheet

Respondent Race 4 Time, Inc.
Case ID No. 35945
Reg. Ent. Reference No. RN105499206
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs	$500	12-Feb-2008	12-Jun-2008	0.33	$8	n/a	$8
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs Estimated cost to apply for and receive authorization to transport sludge and authorize vehicles. Date Required is the date of the investigation, Final Date is the date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs

Approx. Cost of Compliance $500

TOTAL $8

Screening Date 22-May-2008 **Docket No.** 2008-0887-SLG-E **PCW**

Respondent Race 4 Time, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 35945 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN105499206

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 312.143 and Tex. Water Code § 26.121(a)

Violation Description Failed to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the (Texas) facility has written authorization by permit or registration issued by the Executive Director to receive wastes, as documented during the February 12, 2008 investigation. Specifically, waste from 16 chemical toilets was dumped on the ground at property located off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 2 | 100 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,000

Two quarterly events are recommended from the date of the investigation (February 12, 2008) to the date of screening (May 22, 2008).

Economic Benefit (EB) for this violation

Estimated EB Amount $71

Statutory Limit Test

Violation Final Penalty Total $2,000

This violation Final Assessed Penalty (adjusted for limits) $2,000

Economic Benefit Worksheet

Respondent Race 4 Time, Inc.
Case ID No. 35945
Reg. Ent. Reference No. RN105499206
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$1,500	12-Feb-2008	22-Jan-2009	0.95	$71	n/a	$71
Notes for DELAYED costs	Estimated cost to properly dispose of sludge at a facility authorized to accept the type of waste being disposed and to remove all chemical toilet waste and contaminated surface soils from all affected areas. The Date Required is the date the violation was documented. Final Date is the expected date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,500

TOTAL $71

Compliance History

Customer/Respondent/Owner-Operator:	CN603362831	Race 4 Time, Inc.	Classification:	Rating:
Regulated Entity:	RN105499206	RACE 4 TIME	Classification:	Site Rating:

Location: 22 EAST COMMERCIAL, HIGGINS, LIPSCOMB COUNTY, TEXAS

TCEQ Region: REGION 01 - AMARILLO

Date Compliance History Prepared: May 19, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 19, 2003 to May 19, 2008

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Heather Brister Phone: 254/761-3034

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	No
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
RACE 4 TIME, INC.	§	
RN105499206	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0887-SLG-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Race 4 Time, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns a sludge transporting operation, with a business located at 22 East Commercial in Higgins, Lipscomb County, Texas (the "Facility").

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The operation involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

4. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 5, 2008.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of Six Thousand Dollars ($6,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Eight Hundred Dollars ($4,800) of the administrative penalty and One Thousand Two Hundred Dollars ($1,200) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

8. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

9. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

10. The Executive Director recognizes that on June 12, 2008, the Respondent received their sludge transporter registration.

11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

12. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to apply for and receive a sludge transporter registration from the Commission prior to commencing operations, in violation of 30 TEX. ADMIN. CODE § 312.142(a), as documented during an investigation conducted on February 12, 2008 and March 12, 2008. Specifically, the Respondent transported 16 chemical toilets with septic waste from various oil field locations in Texas to property off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas.

2. Failed to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the (Texas) facility has written authorization by permit or registration issued by the Executive Director to receive wastes, in violation of 30 TEX. ADMIN. CODE § 312.143 and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on February 12, 2008 and March 12, 2008. Specifically, waste from 16 chemical toilets was dumped on the ground at property located off of County Road V, approximately four miles north of Higgins, Lipscomb County, Texas.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Race 4 Time, Inc., Docket No. 2008-0887-SLG-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, remove and properly dispose of all the chemical toilet waste and contaminated surface soils from all affected areas;

   b. Within 45 days after the effective date of the Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

      The certification shall be submitted to:

      Order Compliance Team
      Enforcement Division, MC 149A
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date 11/14/2008

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

Date 10-28-08

Chad Appel

Name (Printed or typed)
Authorized Representative of
Race 4 Time, Inc.

President

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.